

**SRT OPS, LLC,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** ) **Civil Action No. CV-09-S-1999-NW**  
 )  
 **R. BAKER, INC.,** )  
 )  
 **Defendant.** )

Plaintiff, SRT OPS, LLC (“SRT”), filed this case on October 7, 2009, asserting claims for breach of contract, open account, and account stated against defendant R. Baker, Inc. (“Baker”).<sup>1</sup> The case currently is before the court on plaintiff’s motion for partial summary judgment,<sup>2</sup> and, defendant’s amended motion for complete summary judgment.<sup>3</sup>

Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).<sup>4</sup> In

<sup>4</sup> Rule 56 was amended, effective December 1, 2010, in conjunction with a general overhaul of the Federal Rules of Civil Procedure. The Advisory Committee was careful to note, however, that the changes “will not affect continuing development of the decisional law construing and applying

other words, summary judgment is proper “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “In making this determination, the court must review all evidence and make all reasonable inferences in favor of the party opposing summary judgment.” *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (*en banc*) (quoting *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995)). Inferences in favor of the non-moving party are not unqualified, however. “[A]n inference is not reasonable if it is only a guess or a possibility, for such an inference is not based on the evidence, but is pure conjecture and speculation.” *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1324 (11th Cir. 1983). Moreover,

[t]he mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is *material* to an issue affecting the outcome of the case. The relevant rules of substantive law dictate the materiality of a disputed fact. A genuine issue of material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor.

*Chapman*, 229 F.3d at 1023 (quoting *Haves*, 52 F.3d at 921) (emphasis supplied).

*See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986) (asking

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these phrases.” Adv. Comm. Notes to Fed. R. Civ. P. 56 (2010 Amends.) (emphasis supplied). Consequently, cases interpreting the previous version of Rule 56 are equally applicable to the revised version.

“whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law”).

“Cross motions for summary judgment do not change the standard.” *Latin Am. Music Co. v. Archdiocese of San Juan of the Roman Catholic & Apostolic Church*, 499 F.3d 32, 38 (1st Cir. 2007). ““Cross motions for summary judgment are to be treated separately; the denial of one does not require the grant of another.”” *Christian Heritage Acad. v. Okla. Secondary Sch. Activities Ass’n*, 483 F.3d 1025, 1030 (10th Cir. 2007) (quoting *Buell Cabinet Co. v. Sudduth*, 608 F.2d 431, 433 (10th Cir. 1979)). “Even where the parties file cross motions pursuant to Rule 56, summary judgment is inappropriate if disputes remain as to material facts.” *Id.*; accord *Monumental Paving & Excavating, Inc. v. Pa. Mfrs. ’ Ass’n Ins. Co.*, 176 F.3d 794, 797 (4th Cir. 1999) (“When considering motions from both parties for summary judgment, the court applies the same standard of review and so may not resolve genuine issues of material fact. Instead, [the court must] consider and rule upon each party’s motion separately and determine whether summary judgment is appropriate as to each under the Rule 56 standard.”) (citations omitted).

*Ernie Haire Ford, Inc. v. Universal Underwriters Insurance Co.*, 541 F. Supp. 2d 1295, 1297-98 (M.D. Fla. 2008). *See also American Bankers Ins. Group v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005) (“This court reviews the district court’s disposition of cross-motions for summary judgment de novo, applying the same legal standards used by the district court, viewing the evidence and all factual inferences therefrom in the light most favorable to the non-movant, and resolving all reasonable doubts about the facts in favor of the non-moving party.”).

Upon careful consideration of the pleadings, briefs, and evidentiary

submissions, the court concludes that there are genuine issues of material fact preventing the entry of summary judgment in either party's favor. Accordingly, plaintiff's motion for partial summary judgment *and* defendant's motion for complete summary judgment are DENIED. This case will be set for pretrial conference and jury trial by separate order.

DONE this 8th day of June, 2011.

A handwritten signature in black ink, reading "Lynwood Smith". The signature is written in a cursive, flowing style. The first name "Lynwood" is written with a large, stylized 'L' and 'y'. The last name "Smith" is written with a large, stylized 'S' and 'm'. The signature is positioned above a horizontal line.

United States District Judge